IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10928 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VAGHELA SHANKERJI MADHUJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10928 of 2001

MR DJ CHAUHAN for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/04/2002

ORAL JUDGEMENT

Rule. Mr.H.C.Patel, learned AGP waives service of rule.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. Mr.D.J.Chauhan, the learned Counsel for the petitioner submitted that the land in question was purchased in the year 1975 and the entry was certified on 15-1-1980. However, the Deputy Collector passed the impugned order declaring the transaction as illegal on 5-3-1993 and the revision application came to be dismissed by the impugned order dated 30-7-2001. Hence the powers under Section 7 and 9 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 were exercised after reasonable period. He has also relied on the decision of this Court in 1984(2) GLR, 1225. It is submitted by the learned Counsel that the land is irrigated as per the certificate issued by Talati-cum-Mantri, Piplaj Gram Panchayat, Gandhinagar, which is produced at Annexure "E" to the petition and the statement of Kanaji Dhalsangji, who supplies water to the petitioner's land, which is produced at Annexure "F".

3. Mr.H.C.Patel, learned AGP for the respondents has submitted that the necessary documents were not produced before the authorities, when the impugned orders came to be passed.

4. The Court would have considered remanding the matter to the authorities if the powers under the Act were exercised within the reasonable time. Considering that the entry was certified in 1980, the Collector passing the order in 1993 would have to be considered as exercise of power after unreasonable delay. Hence, in view of the aforesaid certificate and statement and unreasonable delay, the Court quashes the impugned order dated 30-7-2001 passed by the Joint Secretary, Revenue Department (Appeals), Government of Gujarat and also the order of the Prant Officer, Gandhinagar.

5. Rule is made absolute to the above extent. No order as to costs.

23-4-2002 (M.S. Shah, J.)

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